

CMA brief slams abortion bill, says legislation not needed

Patrick Sullivan

The CMA is "unequivocally opposed" to the inclusion of the medical act of induced abortion in the Criminal Code, and it says the move is neither the best nor the only way for the federal government to respond to the abortion issue.

In a brief presented to the House of Commons legislative committee studying Bill C-43, Ottawa's proposed abortion legislation, the CMA proposes a major change in the bill's wording. (A copy of the brief was mailed with this issue of *CMAJ*.) The proposed legislation states that "every person who induces an abortion on a female person is guilty of an indictable offence" and is liable for up to 2 years' imprisonment unless it is induced by or under the direction of a medical practitioner who "is of the opinion that, if the abortion were not induced, the health or life of the female person would be likely to be threatened". "Health" would include physical, mental and psychological health.

The CMA has proposed an amendment that would make

This legislation will make it extremely difficult for physicians to provide health care "in an appropriate fashion".

— CMA brief

abortion an indictable offence "unless [it] is induced by or under the direction of a medical practitioner in accordance with generally accepted standards of the medical profession".

The association has also asked that a new section be added to protect patients, hospitals and physicians from the "threat and costs of unjustified, politically or harassment-inspired criminal charges". That amendment would mean that no prosecution could be instituted under the new law without consent of an attorney general. The CMA thinks this would help eliminate the laying of frivolous charges by antiabortionists.

The association's 19-page

brief, presented by a delegation led by Dr. Marcien Fournier, the president, reiterated the policy the association adopted in 1988, that the decision to perform an induced abortion is a medical one made confidentially between the patient and her physician within the context of the doctor-patient relationship "after conscientious examination of all other options".

The CMA is opposed to Bill C-43 on five major fronts:

- It believes that making abortion the only medical act specifically named under the Criminal Code would be inappropriate: "Abortion should be controlled under the same statutes that apply to other medical acts." The CMA also feels the legislation could set

Patrick Sullivan is CMAJ news and features editor.

an "inappropriate precedent" and lead to federal legislation controlling other medical acts that have moral overtones, such as sterilization or the intrauterine treatment of the fetus.

- It says the criminalization of abortion threatens the nature of the physician-patient relationship. The CMA argues that the possibility of criminal action "will hang over the physician every time he or she [advises a patient about abortion or performs one]" and this will make it extremely

balance" and make many stop performing them.

- The association argues that the bill creates a "conceptual nightmare". For instance, it does not define what "health" means in relation to the Criminal Code, and "the use of adjectives like physical, mental and psychological further obfuscates the issue". The CMA argued strongly that no abortion legislation is needed because "women have continued to behave responsibly in the absence of federal legislation" since Sec-

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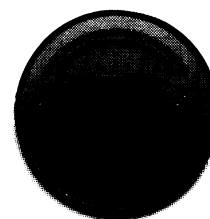
difficult to provide health care "in an appropriate fashion". From the patient's perspective, Bill C-43 will encourage "deceit and lying . . . it forces women whose priorities and aspirations are discounted to feign demonstration of the criteria specified in the bill". A bill that does this "cannot be in the best interest of the nation".

- The CMA says the bill will confer legal entitlement to abortion "at the expense of access to the service". It says the threat of criminal prosecution and legal harassment will convince some physicians to stop performing abortions, and even a modest reduction in the number will mean that women will have to travel further to secure an abortion. The CMA warned that physicians who perform abortions do so because it is a professional responsibility and "it will take very little to tip the

tion 251 of the Criminal Code was struck down in January 1988. The brief also states that Bill C-43 "is silent" on the question of who is harmed by abortion. "If it is the intent of government to grant a degree of fetal rights, such an intent should be stated clearly." The CMA says that if a "harmed person" is not identified, the bill "amounts to the creation of an offence without the identification of an offended party, a situation that we are informed would be unique in the annals of criminal law".

The association concluded by chiding the federal government for taking action on the abortion issue at a time when its actions in the family-planning field are "completely inadequate. With respect, we point to the obvious need for meaningful, effective programs in this area". ■

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